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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

SUMOTEXT CORP.,
Plaintiff,
v.
ZOOVE, INC., et al.,
Defendants.

Case No. 16-cv-01370-BLF

**ORDER GRANTING PLAINTIFF'S
MOTION TO CHANGE TIME;
EXTENDING FACT DISCOVERY CUT-
OFF TO APRIL 16, 2018; AND SETTING
CASE MANAGEMENT CONFERENCE
FOR FEBRUARY 8, 2018 TO DISCUSS
WHETHER FURTHER EXTENSION OF
THE FACT DISCOVERY CUT-OFF IS
APPROPRIATE**

[Re: ECF 231]

The Court has reviewed Plaintiff's Motion to Change Time (ECF 231), seeking an extension of the December 8, 2017 fact discovery cut-off to April 15, 2018, and the responses filed by Defendants (ECF 232, 233, 235, 236). While Defendants agree that an extension of the fact discovery cut-off is necessary, they contend that the extension requested by Plaintiff is grossly inadequate given that the pleadings are not yet settled. Defendants request an extension to at least October 2018.


The operative third amended complaint ("TAC") alleges claims for: (1) breach of contract; (2) breach of implied contract; (3) tortious interference with contracts; (4) restraint of trade in violation of Section 1 of the Sherman Act; and (5) conspiracy to monopolize and monopolization in violation of Section 2 of the Sherman Act. Defendants have filed motions to dismiss the TAC which are set for hearing on February 8, 2018 and March 1, 2018. The pleadings thus will not be settled until March 2018 at the earliest. In light of this schedule, it appears that an extension of the fact discovery cut-off is necessary. The Court recognizes that an extension to April 2018 may not be adequate, especially if Plaintiff's antitrust claims go forward. However, the Court cannot make that determination on the record before it.

1 The Court GRANTS Plaintiff's motion to change time and EXTENDS the fact discovery
2 cut-off to April 16, 2018 on an interim basis.¹ The Court SETS a further case management
3 conference for February 8, 2018 at 9:00 a.m., immediately following the motion hearing set for
4 that date and time, to discuss whether a further extension of the fact discovery cut-off is
5 appropriate. Because any further extension of the fact discovery cut-off likely would affect the
6 October 2018 trial date, the parties should be prepared to discuss potential adjustment of the entire
7 case schedule.

8 Defendant Mblox, Inc., which is not a moving party with respect to the motions set for
9 hearing on February 8, 2018, may appear telephonically.

10 **IT IS SO ORDERED.**

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12 Dated: December 14, 2017

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14 BETH LABSON FREEMAN
15 United States District Judge
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28 ¹ Because the April 15, 2018 date requested by Plaintiff falls on a Sunday, the Court extends the
discovery cut-off to the next business day, April 16, 2018.